No. (1)

Supreme Court, U.S.
FILED
04-490 SEP 13 2004
OFFICE OF THE CLERK

IN THE

Supreme Court Of The United States

Tommy L. Parker,

Petitioner

v.

Ron McLaurin
&
Jesse Mendez.

Respondent(s)

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Tommy L. Parker
Pro Se/ Petitioner
235 Indiana Ave. F217
Lubbock, Texas 79415
(806) 744-6005

QUESTIONS PRESENTED

1.

Whether the Fifth Circuit Court erred in dismissing the Pro Se Appellant's appeal for failure to challenge the legal basis upon which the District Court dismissed Appellant's complain, without giving Pro Se Appellant an opportunity to amend. *Conley v. Gibson 355 U.S. 41, 45-46, 785. C.T. 99,101,102,2L.ED 2d.80 (1957).*

2.

Whether the District Court erred in reconsidering the Defendants' Rule 12(b)(6)Motion to Dismiss lawsuit after, the Court had earlier denied the Motion on the grounds that the Motion did not comply with local Rules of Civil Procedures, without giving the Pro Se Plaintiff a chance to amend his complaint. *Bazrowx v. Scott, 136 F.3d.1053,1054 (5th Circuit 1998).*

LIST OF INTERESTED PARTIES

The undersigned Petitioner of record certifies that the following listed persons have an interest in the outcome of this case. These representatives are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. **Tommy L. Parker.,** Petitioner;

2. **Ron McLaurin.,**Attorney and Respondent;

3. **Jesse Mendez.,** Respondent;
   and Counsel for Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Tommy L. Parker, Pro Se, respectfully request that this Court grant a Writ of Certiorari to review the judgment, of the United States Court of Appeals for the Fifth Circuit in this case, and also the judgment of the District Court.

COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE BELOW

This case was originally filed in the United States District Court for the Northern District of Texas, alleging claims under Rule 42 USC 1983. The Defendants filed a Rule 12(b)(6)Motion to Dismiss. (See, APPENDIX 'A'). The Court denied the Motion. (See, APPENDIX 'B').

On December 9, 2002, the Court signed a Pretrial Notice and Order. (See, APPENDIX 'C'). The parties met on April 12, 16, and 30th of 2003 to jointly prepare the Pretrial Order, and on May 2, 2003, the Appellant hand-delivered the final draft of the Pretrial Order to the District Clerk for filing. (See, APPENDIX 'D'). This document is important evidence in the Petitioner's claim because the parties stipulates to facts that supports the Petitioner's claims of conspiracy. This document is missing from the Courts Records.

On May 30, 2003, the Court held a preliminary hearing without notifying the parties of what the hearing was about. During the hearing, the trial judge stated that the purpose of the hearing was to reconsider the Defendant's Rule 12(b)(6) Motion to Dismiss, and on June 2, 2003, the Court entered an Order and Judgment dismissing the Appellant's claim. (See, APPENDIX 'F', and APPENDIX 'G').

Petitioner timely filed his Notice of Appeal, and did appeal to the United States Court of Appeal for the Fifth Circuit USDC , No.0310649.

The Petitioner's appeal was dismissed on June 23, 2004. (See, APPENDIX 'H').

JURISDICTION

This case was originally filed in the United States District Court for the Northern District of Texas, alleging a claim under Rule 42 USC 1983, presenting a matter of Federal question. The Fifth Circuit Court of Appeals had jurisdiction over the original appeal pursuant to Rule 28 USC 1291, and 1294. The Fifth Circuit Court of Appeals also has jurisdiction to dismiss, or grant the Petitioner an opportunity to amend his petition. Jurisdiction of this Honorable Court is invoked under Rule 28 USC 1254(1).

STATEMENT OF ISSUES PRESENTED

Petitioner, Tommy L. Parker, Pro Se, files this petition for a Writ of Certiorari on issues relevant according to The United States Supreme Court Rules, and thereby will respectfully show the Court as follows:

1. The Fifth Circuit Court of Appeals erred when it dismissed the appellate appeal, for failing to challenge the legal basis upon which the District Court dismissed his complaint. In the Appellant's brief, the Appellant argued that the dismissal of Plaintiff's lawsuit was unconstitutional because, dismissal of a Pro Se complaint for failure to state a claim under Rule 12(b)(6), without allowing the Plaintiff an opportunity to amend may be error, however, no error is committed if the Court determines the Plaintiff has alleged his best case. *Bozrowx v. Scott 136 F.3D.,1053,1054(5th Cir. 1998).* (See, APPENDIX 'E', AND 'I').

CONCLUSION

For the foregoing reasons as stated in Appendix "E", and Appendix 'I', Petitioner respectfully submits that the decision of the Fifth Circuit Court of Appeal was in error, and harsh, and is in contravention to establish precedent of the United States Supreme Court and the Fifth Circuit. Petitioner request that the Certiorari be granted and upon consideration of the issues and arguments raised herein that this Court overrule the Fifth Circuit Court of Appeals, and grant the Petitioner all relief that the Petitioner may be justly entitled, and the judgment, and orders of both the Fifth Circuit Court of Appeals, and the District Court be vacated. Petitioner further request that this case be transferred to the District Court in Dallas, Texas.

Respectfully Submitted,

Tommy L. Parker/ Pro Se
Petitioner
235 Indiana Ave. F217
Lubbock, Texas 79415
(806) 744-6005

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK, TEXAS

Rabbi. Tommy L. Parker
Plaintiff

Filed: U.S. District Court
Date: June 17, 2000

v.
Ron McLaurin and
Jesse Mendez,
Defendant.

No. 5:02CV115-C

DEFENDANTS MOTION TO DISMISS
RULE 12 (B) (6)

To The Honorable Judge of Said Court:

Before the Court comes now Defendants, Ron McLaurin and Jesse Mendez, and as to Plaintiffs untitled complaint , filed May 29, 2002, and as styled and numbered above, move the Court to dismiss the complaint as followed by provision of Civil Rule 12(b)(6). In support hereof, Defendant shows the following:

Rule 12 Defenses:

Pursuant to the provisions of Civil Rule 12, Defendant moves against Plaintiff's complaint in the following particulars:

1. The Court lacks jurisdiction over subject matter, Rule 12 (b)(1) ;
2. Plaintiff has failed to state a claim for which relief may be granted. Rule 12 (b)(6) ; and,
3. Plaintiff has failed to join a necessary party under Rule 19, Rule 12(b)(7).

II.

Pursuant to Civil Rule 12(b)(6), Plaintiff's complaint should be dismissed for failure to state in his pleading a claim upon which relief may be granted, and Defendant so move the Court o the facts as indicated in Plaintiff's complaint, no recovery is possible under any legal theory.

Respectfully Submitted,
"s/Jesse Mendez"

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK, TEXAS

Rabbi. Tommy L. Parker
Plaintiff

Filed: U.S. District Court
Date: June 17, 2002
Civil Action
No. 5:02CV115-C

v.
Ron McLaurin and
Jesse Mendez,
Defendants.

ORDER

The Court having considered Defendants Motion to Dismiss (Rule 12,) filed June 17. 2002, is of the opinion that the same should be denied for failure to comply with local Rule 7.1(d) and (h).

So Ordered.
Dated June 17, 2002.

"s/Sam Cummings".
SAM CUMMINGS
U.S. DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

Rabbi. Tommy L. Parker
Plaintiff

Filed: U.S. District Court
Date: Dec. 9, 2002
Civil Action
No. 5:02CV115-C

v.
Ron McLaurin and
Jesse Mendez,
Defendants.

PRETRIAL NOTICE AND ORDER
TRIAL DATED JUNE 2, 2003, AT 9:00 A.M.

Counsel and all Parties will take Notice:

The above case is set for trial on the date and time indicated. Each attorney and party are hereby ordered to comply with the following:

A. All Counsel shall jointly prepare a proposed pretrial Order for the Court to enter which will contain the following: (A-J);

J. Any party not represented by an attorney is expected to comply with the above.

It Is So Ordered.
Dated : December 9, 2002.

"s/Sam Cummings".
SAM CUMMINGS
U.S. DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

Rabbi. Tommy L. Parker
Plaintiff,

Civil Action
No. 5: 02-CV-115-C

v.

Filed: Hand-delivered for filing, on May 2, 2003.

Ron Mc Laurin,
Jesse Mendez &
Vilsen Salinas

This document is missing from the file.

PRE-TRIAL ORDER

To the HONORABLE JUDGE OF SAID COURT:

Comes Now TOMMY L. PARKER, Plaintiff, and RON McLAURIN and JESSE MENDEZ, Defendants in the above -styled and numbered cause, and file this, their joint pre-trial order and state as follows:

1. SUMMARY OF CLAIMS AND DEFENSES

PLAINTIFF'S CLAIMS:
Plaintiff Tommy L. Parker 's summary of his claims are as follows. The defendants actions caused Plaintiff's lawsuit to be dismissed by a state constitutionally disqualified judge, and violated Plaintiff's Due Process Rights under 42 USCA 1983.

DEFENDANTS' CLAIMS AND DEFENSES:
Defendants Ron McLaurin an Jesse Mendez summary of the claims as gleaned from Plaintiff's petition and conferences with Plaintiff. Plaintiff brings his action citing a violation of civil rights, specifically. that Defendants, along with various State District Judges in Lubbock County conspired and continue ,

to conspire to violate his right to the equal protection of the laws under the Fourteenth Amendment to the United States Constitution. Plaintiff alleges that he originally sued Ron McLaurin, an attorney licensed to practice law in the State of Texas, for legal malpractice arising from McLaurin's alleged failure to properly represent Plaintiff in a legal malpractice lawsuit had filed against an attorney named Cynthia Watts in Harris County, Texas in 1992. Plaintiff claims that at the time he had engaged McLaurin to represent him in the suit in Harris County, defendants McLaurin and Mendez were associates in a firm called Salinas Law offices.

Plaintiff filed the said suit against McLaurin in 1994 and a jury trial was had in October, 1995 in the 72nd. District Court of Lubbock County, Texas before the Honorable J Blair Cherry. The jury found in favor of McLaurin and against Plaintiff. Plaintiff contends that he was denied a fair trial because McLaurin's attorney, Defendant Mendez, prepared the jury charge which Judge Cherry submitted to the jury, and that Judge Cherry should have disqualified himself from presiding over the trial because at one time, Judge Cherry and McLaurin worked in the Lubbock County District Attorney's Office at the same time. Plaintiff contends that the prior association of Judge Cherry and McLaurin disqualified Judge Cherry from presiding over the trial pursuant to Texas Constitution Article 5, Chapter 11, and that for such reason the jury verdict was void.

Plaintiff also maintains that Defendants and Judge Cherry engaged in *ex parte* communication during the course of the trial and that such communication was in violation of Texas Disciplinary Rule 3.05.

Plaintiff asserts that McLaurin twice gave perjured testimony in that McLaurin allegedly states that, (1). he had never represented Plaintiff in any lawsuit and that, (2). he had previously represented Thomas Jimison on a *pro-bono* basis. Plaintiff further contends that McLaurin was directed by Mendez to lie under oath.

Plaintiff also states that he "re-filed" the same suit against McLaurin in Harris County and he took a nonsuit because he was financially unable to maintain it after the case was transferred to Lubbock County. However, Plaintiff then filed the suit again in Lubbock County in 2000.

Plaintiff claims that Mendez called and spoke with Judge Mackey Hancock and asked that the pending case be transferred to the court where Judge Sam Medina presided,(the 237th District Court of Lubbock County).

Plaintiff claims that Mendez knew such a transfer would be improper because Judge Medina and Mendez' former law partner, Vilsen Salinas, had at one time been law partners together. Plaintiff also alleges that Mendez knew Plaintiff was incarcerated in the Randall County jail from March 22,2001, through June 22, 2001, and that Mendez failed to notify Plaintiff of a court hearing. Because of Mendez' failure to notify Plaintiff of the setting, Plaintiff alleges his case was dismissed. Plaintiff claims Mendez committed an ethical violation by contracting the court and "influencing the decision of the judge".

Plaintiff asserts that the foregoing alleged facts support his claim , that Defendants and others have conspired to violate his right to due process.

Defendants summary of their defenses is as follows:

Defendants deny that they are in a position to violate Plaintiff's constitutionally guaranteed right to the equal protection of the laws. The Fourteenth Amendment provides that no State will make or enforce a law which denies the equal protection of the laws to any person in the United States. Neither Defendant is a State, but individuals. Thus, Plaintiff's case against Defendants herein is therefore untenable.

Defendants agree with Plaintiff's pleadings with respect to the fact that he has filed the same action against Defendants multiple times. Defendants contends that Plaintiff's claim herein is the same, or of substantially collaterally the same issues or facts which he had previously brought in his suits against Defendants in state courts. Consequently, Plaintiff is barred to proceed by the doctrines of *res judicata* and *collateral estoppel.*

Defendant McLaurin denies he testified falsely under oath as alleged by Plaintiff, and Mendez denies ever instructing McLaurin to commit perjury. Defendants further deny that they improperly influenced any judge to rule in any way that the judges have so done.

Defendants agree that at one time Judge Cherry and McLaurin worked together in the district attorney's office. However, such fact did not require the recusal or disqualification of Judge Cherry because the statue requires such action only when the judge has an interest in the outcome of the case, or where the judge has a blood-relationship with one of the parties. Neither situation existed in the case to Plaintiff refers.

Furthermore, state laws requires that where a party objects to a judge presiding over a matter because of an alleged conflict of interest, the party which objects must file his objection no later than 10 days before trial of the matter.

Defendants contend that, even if a conflict of interest existed involving Judge Cherry, Plaintiff failed to properly object, and his failure to do so constituted waiver of any error. *(See Tex. R. Civ. P. 18a and 18b).*

Mendez denies that neither he nor any judge associated with any of the stated cased committed any ethical violations.

2. STATEMENT OF STIPULATED FACTS

The parties stipulate to the facts recited in this, Section 2, of their joint Pre-Trial Order. Plaintiff is entitled the equal protection of the Constitution and all laws. Neither Defendant is a State.

As a result of Plaintiff's loss in his suit against Watts, Plaintiff filed suit against McLaurin in Lubbock County in July, 1994, alleging legal malpractice. The case was tried to a jury in the 72nd. District Court of Lubbock County, Texas, Judge J. Blair Cherry presiding. The jury found in favor of McLaurin, and Plaintiff took nothing. Defendant Mendez acted as McLaurin's attorney and prepared the final version of the instructions with which Judge Cherry charged the jury. Plaintiff had objected to the charge and had moved to include four instructions. His objection was overruled and his motion was denied. Plaintiff also moved to reopen testimony so that he could present what he believed to be evidence of perjury by McLaurin. Said motion was denied.

Plaintiff re-filed the same suit against McLaurin in Harris County. The case was transferred to Lubbock County pursuant to McLaurin's motion to transfer venue.

The case was eventually transferred over Plaintiff's objection to the 237th District Court of Lubbock County, Texas, Judge Sam Medina presiding. Judge Medina and Vilsen Salinas had been law partners for a period of time during the year 1995. To the extent the laws are applicable to this particular case, it would have been improper for Judge Medina to preside in any case where Salains was a party.

Judge Medina dismissed the case for want of prosecution.

McLaurin and Judge Cherry had, prior to a trial, worked together in the Lubbock County District Attorney's Office from May 26, 1987 until May 31, 1988.

3. CONTESTED ISSUES OF FACT

(a). Whether there was activity of any kind between presiding judges and the defendants which constituted a "conspiracy" as alleged by Plaintiff.
(b). Whether any activity between presiding judges and the defendants which resulted in the denial of Plaintiff's right to the equal protection of the laws as he has alleged.
(c). Whether Defendants can be held liable for a claim for a violation of rights as alleged by the Plaintiff.
(d). Whether Ron McLaurin was Plaintiff's lawyer in the Watts' case.
(e). Did Defendants and the Lubbock County Judges violate the rules of ethics, including the prohibition of improper *ex parte* communications.
(f). Whether Mendez instructed McLaurin to lie under oath during trial.
(g). Whether the jury charge in Plaintiff's lawsuit against McLaurin in the 72nd. District Court trial was improperly or illegally prepared and submitted.
(h). Whether Plaintiff has already pled and tried the same facts and issues in another tribunal.
(i). Whether Plaintiff is barred from pursuing this matter against Defendants under the doctrines of *res judicata* and *collateral estoppel.*

4. CONTESTED ISSUES OF LAW

Plaintiff's Version:

Plaintiff believes Judge Cherry and Judge Medina should have disqualified themselves from the cases over which they respectively presided without the need of a motion from any party; that such disqualification is mandatory and not discretionary. Plaintiff believes that the fact Mendez prepared the jury charge Judge Cherry submitted to the jury was improper and a violation of the texas Rules of Civil Procedure because Plaintiff should have prepared the charge.

Defendant's Version:

Defendants' position is that Plaintiff is bared to prosecute this case because he is barred by *res judicata* and *collateral estoppel.* Defendants also argue that the judges of whom Plaintiff complains were not under a duty to *sua sponte* recuse themselves; that no ethical violations were committed by their presiding over the cases, and that if any conflict of interest existed, such was waived because Plaintiff failed to timely object as required by the Texas Rules of Court.

Furthermore, neither Judge Cherry nor any defendants violated a rule of ethic, a statute, nor anyone's civil rights when Mendez prepared the jury charge which Judge Cherry adopted and submitted.

Defendants also argue that no law provides that they can be held liable to Plaintiff under the theory of his claim: a violation of his Fourteenth Amendments Rights.

5. ESTIMATED LENGTH OF TRIAL

The parties estimated the length of trial to be two (2) days.

6. ADDITIONAL MATTERS WHICH WOULD AID IN THE DISPOSITION OF THIS CASE.

The parties believe there are no additional matters which would aid in the disposition of this case.

7. CERTIFICATE OF SETTLEMENT CONFERENCE

The parties have met on several occasions, specifically, April 12, 2003, April 16, 2003, April 30, 2003, May 1, 2003, and May 2, 2003. and Defendants are not willing to settle.

Respectfully Submitted,

Tommy L. Parker
Pro Se/ Plaintiff
235 Indiana Ave. F217
Lubbock, Texas 79415
(806) 744-6005

"s/ Jesse Mendez"
JESSE MENDEZ
Attorney at Law
SBN: 13932590
2833 74th St.
Lubbock, Texas 79423
806 748-5287
fax: 806-7485256

Approved and Entered on this ,the____day of_____,2003.

HON. SAM R. CUMMINGS
United States District Judge

APPENDIX E
pg. 5
of The Brief For Appellant

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

USDC No. 03-10649

RABBI. TOMMY L. PARKER
Plaintiff-Appellant,

v.

RON McLAURIN & JESSE MENDEZ
Defendants-Appellees.

Appeal From The United States District Court
For the Northern District of Texas
at Lubbock, Texas

BRIEF FOR APPELLANT

STATEMENT OF THE ISSUE

The Rule 12(b)(6) dismissal of Appellant's lawsuit was unconstitutional because, (1), the Appellant is a Pro Se, and the dismissal of a Pro Se complaint for failure to state a claim under Rule 12 (b)(6), without giving the Plaintiff an opportunity to amend, may be in error, however, no error is committed if the Court determines the Plaintiff has alleged his best case.(See, Bazrowx v. Scott, 136 F.3d.1053,1054).

Rabbi. Tommy L. Parker
Pro Se / Petitioner
235 Indiana Ave. F217
Lubbock, Texas 79415
806 744-6005

Jesse Mendez
Attorney
2833 74th Street
Lubbock, Texas

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, LUBBOCK DIVISION

Rabbi. Tommy L. Parker
Plaintiff,

Filed: U.S. District Court
Date: June 2, 2003

v.

Ron McLaurin and,
Jesse Mendez.
Defendants.

Civil Action No.
5:02-CV-115-C

ORDER

Came on for preliminary hearing the above -styled and numbered cause. The Court announced the purpose of the hearing was to reconsider the Defendants' Motion to Dismiss the Plaintiff's lawsuit pursuant to Fed. R. Civ. P. 12(b)(6).

Based upon the pleadings and after hearing arguments presented by both sides, the Court is of the opinion that the Motion should be granted. The Court fins that this case nust be dismissed for a failure on the part of the Plaintiff to state a claim upon which relief can be granted. The Plaintiff cannot show that the Defendants were acting under the color of state law as required by 42 USC 1983. The Defendants were private attorneys who were representing the Plaintiff on matters in state court. The state trial judges were not disqualified from hearing the state cases.

Judgment shall be entered that Plaintiff take nothing as against these Defendants.

SO ORDERED: This "s/2nd.", day of June, 2003.

"s/Sam Cummings "
SAM CUMMINGS
UNITED STATES DISTRICT JUDGE

APPENDIX G

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, LUBBOCK DIVISION

Rabbi. Tommy L. Parker
Plaintiff,

Filed: U.S. District Court
Date: June 2, 2003

v.

Ron McLaurin and,
Jesse Mendez.
Defendants.

Civil Action No.
5:02-CV-115-C

JUDGMENT

For the reasons as stated in open court and as stated in an Order entered contemporaneously with this Judgment, the Court enters the following Judgment.

IT IS ORDERED, ADJUDGED, AND DECREED that the Plaintiff take nothing as against the Defendants Ron McLaurin and Jesse Mendez. This case is DISMISSED with prejudice with all court costs taxed against Plaintiff.

SO ORDERED: This "s/2nd.", day of June, 2003.

"s/Sam Cummings "
SAM CUMMINGS
UNITED STATES DISTRICT JUDGE

APPENDIX H

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Rabbi. Tommy L. Parker
Plaintiff-Appellant

Filed: U.S. District Court
Date: June 23, 2004

v.

Ron McLaurin and,
Jesse Mendez.
Defendant-Appellees

No. 03-10649
Conference Calendar

Appeal from the United States District Court
For the Northern District of Texas
USDC No. 5:02-CV-115-C

Before BARKSDALE, DeMOSS, AND CLEMENT, Circuit Judges.
Per Curiam:

Tommy L. Parker , a Texas resident, appeals from the district court's order granting the defendants' FED. R. CIV.P. 12(b)(6) motion to dismiss his complaint, purportedly filed pursuant to the civil rights provision, 42 USC 1983, for failure to state a claim on which relief may be granted. Parker sought damages from the defendants, Mclaurin and Mendez, who are attorneys in private practive, for violations of his due process rights. Parker made the following allegations: After he hired McLaurin to represent him in a state law matter, McLaurin effectively abandoned him. Parker then sued McLaurin, who hired Mendez as his own attorney. During this second proceeding, McLaurin perjured himself, and both McLaurin an Mendez engaged in improper *ex parte* communications with the trial judge.

The district court granted the defendants' Rule 12(b)(6) motion on the grounds that Parker's allegations failed to establish that either defendant had acted under "color of state law".*(See, Morris v. Dearborne, 181,F3d 657,666 n.6 (5th Cir. 1999).*

In his Pro Se Appellate Brief, Parker has failed to challenge the legal basis upon which the District Court dismissed his complaint. Failure to identify an error in the District Court's analysis is the same as if Parker had not appealed the judgment. *Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F. 2d 744, 748 (5th Cir. 1987).* Accordingly, Parker's appeal is without merit, *Howard v. King, 707 F. 2d 215, 219-20 (5th Cir. 1983),* and we DISMISS the appeal as frivolous, 5th Cir. R. 42.2.

Parker's Motion to Amend his reply brief is DENIED as unnecessary. Appeal DISMISSED; Motion To Amend DENIED.

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* Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

APPENDIX I

U S D C No. 03-10649

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Rabbi. Tommy L. Parker
Plaintiff-Appellant

V.

Ron McLaurin-Jesse Mende
Defendant-Appellee(s)

Appeal from the United States District Court
For the Northern District of Texas
at Lubbock, Texas

BRIEF FOR APPELLANT

Rabbi. Tommy L. Parker
Pro Se
Petitioner
235 Indiana Ave. F217
79415
(806) 744-6005

Jesse Mendez
Attorney
Respondent
2833 74th St.
Lubbock, Texas 79423

APPENDIX I

The Court erred when it dismissed Plaintiff's lawsuit for failure to state a claim. The Court also erred when it stated that, " the defendants were private attorneys who were representing the Plaintiff on matters in state court". The State trial Judges were not disqualified from hearing the State cases. (See, APPENDIX 'F').

The Defendants were not representing the Plaintiff on matters in State Court . Plaintiff sued the defendants for professional malpractice, and the trial Judges that presided over the cases were disqualified by State Statues.

Parker argues that because Defendant McLaurin and Judge Cherry had at one time practiced law together, that Judge Cherry should have disqualified himself from presiding over the case. Plaintiff further argues that after filing said suit against Ron McLaurin in 1994, a jury trial was held in October 1995, the jury found in favor of McLaurin. Parker argues that he was denied a fair trial because McLaurin's attorney, Jesse Mendez, who should have been a defendant in the proceedings , prepared the Charge, which Judge Cherry charged to the jury. Plaintiff argues that the prior association of Judge Cherry and McLaurin disqualified Judge Cherry from presiding over the trial, pursuant to Texas Constitution , Article 5, Chapter 11, and for that reason, the jury's verdict was void.

Plaintiff also maintains that McLaurin and Mendez engaged in *ex parte* communication the morning of the trial, which is in violation of Texas Disciplinary Rule 3.05. Parker argues that McLaurin twice gave perjured testimony in McLaurin's statement that he had never represented the Plaintiff in any lawsuit. and that he had previously represented Plaintiff's brother in a civil suit *pro bono.* Plaintiff filed another lawsuit naming McLaurin, Jesse Mendez, and Vilsen Salinas as defendants. This case was filed in the 99th District Court in Lubbock County, Texas. Mendez, without a hearing had the case transferred to the 237th District Court in Lubbock, Texas, a transfer he knew was improper because both he and Vilsen Salinas previously had been law partners. (See, APPENDIX 'L').

Respectfully Submitted,
"s/Tommy L. Parker/Pro Se

APPENDIX J

William Sowder
Criminal District Attorney
P.O. Box 10536
Lubbock, Texas 79408-3536

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STATE OF TEXAS
Office of the Criminal District Attorney

April 15, 1996

Rev. Tommy L. Parker
3204 Avenue J.
Lubbock, Texas 79405

Filed: April 15, 1996
No. 96-554-966
Certified Copy:
Dated: July 31, 1996

The requested information pertaining to District Judge Blair Cherry and Attorney Ron McLaurin is as follows:

Judge Cherry worked for the District Attorney's Office from, 1-1-87 to 5-31-88 as Felony Chief.

Ron McLaurin worked as an Attorney from 5-26-87 to 7-18-90.

Respectfully,
"s/James L.Freeman"
Chief Administrator
Lubbock County
Criminal District Attorney's Office

"s/ Lisa Wood"
Deputy

APPENDIX K

No. 34, 309-B

Tommy L. Parker
Plaintiff,
vs.
John Mann
Defendant.

In The 181st. District Court

A CERTIFIED COPY:
OCTOBER 31, 1995
Randall County, Texas

MOTION TO SUBSTITUTE COUNSEL

Comes Now, Tommy L. Parker, Plaintiff in the above and numbered cause, and moves the Court to allow RON McLAURIN to substitute for CHARLES CHAMBERS as attorney of record in this cause. As grounds therefore, Movant would show:

Plaintiff has retained RON McLAURIN to represent him in other cases currently pending. Plaintiff is desirous of having one attorney represent him on all cases.

Both counsel approve of this Motion and join Plaintiff in this request.

Wherefore, for the reasons stated above, Plaintiff request that this Motion be granted, and that RON McLAURIN be allowed to substitute for CHARLES CHAMBERS a attorney of records.

"s/Charles Chambers
APPROVED
CHARLES CHAMBERS

Respectfully Submitted,
"s/ Ron McLaurin
RON McLAUIN
ATTORNEY AT LAW
2522 74th Street
Lubbock, Texas 79423
(806) 763-9531
State Bar No. 13744700

APPENDIX L

THE TEXAS LEGAL DIRECTORY
1995

Official Directory of the State Bar of Texas:
Law Library/Texas Tech University
Lubbock, Texas 79409 **Volume II**

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79423.....(806) 763-9551
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7942-1428.....(806) 763-3832
Mellinger, Victor M. P.O.Box 42041
79409.....(806) 742-2155. Fax: 742-2330
Mendez, Jesse. 2521 74th St. 79453..... (806) 763-9551

Records Excerpts:
No. 03-10649
In The United States Court of Appeals,
For the Fifth Circuit